Keokuk County/P.P.M.E. Local 2003 (Roads) 2003-2004 CFD 255 Section 3

IN THE MATTER OF FACTFINDING BETWEEN

Keokuk County, Public Employer, and Public Professional and Maintenance Employees, Local 2003, I.U.P.A.T., Employee Organization.	)))))))))	**FACT FINDER'S RECOMMENDATION** Terry D. Loeschen, Fact Finder

I. APPEARANCES

For the Employer:

Renee Von Bokern, Employer Bargaining Representative

For the Employee Organization:

Randall D. Schultz, Business Representative
Larry Bird, Union Representative
Monte Miller, Union Representative

II. JURISDICTION

This proceeding arises pursuant to the provisions of the Iowa Public Employment Relations Act, Iowa Code Chapter 20 (hereafter referred to the "Act"). Keokuk County (hereafter referred to as "Employer" or "County") and Public Professional and Maintenance Employees, Local 2003, I.U.P.A.T. (hereafter referred to as "Union" or "Employees") have been unable to agree upon certain provisions for a collective bargaining agreement for the time period commencing July 1, 2004 and continuing through June 30, 2005. The parties held three bargaining sessions and were unable to resolve their differences, resulting in a

bargaining impasse. The Public Employment Relations Board (hereafter referred to as "Board") appointed a mediator to resolve the impasse between the parties. Mediation occurred March 10, 2004. The mediation was not successful. The parties selected the undersigned as Fact-Finder to make written findings of fact and recommendations for the resolution of the impasse dispute in accordance with Section 21 of the Act.

A fact-finding hearing was held at Sigourney, Iowa, on Monday, April 5, 2004, and was completed the same day. At the hearing the parties submitted their final fact-finding proposals for consideration by the Fact-Finder. Both the County and the Employee Organization were ably represented by their respective bargaining representatives.

The parties stipulated that this matter is properly before the Fact-Finder and that the Fact-Finder has jurisdiction to issue a Fact-Finding Report and Recommendation. During the hearing the parties were provided a full opportunity to present evidence, exhibits and arguments in support of their respective positions. The hearing was tape recorded in accordance with the regulations of the Board. Upon conclusion of the presentation of evidence and statements made by the representatives of the parties, the parties declined to file written briefs in support of their positions. The record was closed and the case was deemed under submission. Through their representatives, the parties mutually agreed that the time for issuance of a Fact-Finding Report and Recommendation would be extended to May 1, 2004. Both sides also stipulated for the record that their present written agreement to extend the statutory impasse deadline to May 15, 2004, would be extended to June 15, 2004.

III. BACKGROUND

Keokuk County is a political subdivision of the State of Iowa and is located in what might be generally described as the upper portion of the southwest quadrant of the State of Iowa. The Union was recognized as the certified bargaining representatives for the County Roads Department by the Iowa Public Employment Relations Board in 1983. The parties have settled collective bargaining agreements on a voluntary basis for 19 consecutive years. This is the first fact-finding which has occurred between the parties.

The bargaining unit consists of 25 employees in the secondary road department. While not all job classifications are filled in that department, at the present time there are 14 equipment operators, 4 utility workers, one general working foreman, one shop foreman, two mechanics, one engineering tech. I and two engineering tech. II. There is no other organized bargaining unit for Keokuk County and other groups of employees are best described as determining wages and conditions of employment on a meet and confer basis.

The parties have a written agreement to extend the statutory impasse deadline to May 15, 2004. As was stated above, the parties mutually modified that agreement at the close of the fact-finding hearing to extend their statutory impasse deadline to June 15, 2004.

Comparability Group

Because this the first fact-finding for the parties, there is no historically established comparability group of like counties. However, both the Employer and the Union presented the same counties for comparison purposes with one exception; that being the Union's inclusion of Louisa County and the Employer's omission of that county. Louisa County does

not have organized bargaining and therefore is of limited value for comparison purposes.

Both the Union and the Employer proposed the following counties to be used for comparison purposes under the statutory criteria established for arbitrators more specifically discussed below: Poweshiek County, Iowa County, Monroe County, Appanoose County, Davis County and Van Buren County. Poweshiek and Iowa counties abut Keokuk County and the remaining four are located in the southern two tiers of counties to the south. All the comparison counties are within the southeast quadrant of the state. The undersigned finds that those six counties are appropriate counties for comparison purposes. All are close in population size and within acceptable geographic proximity. As indicated above, while the Fact-Finder has reviewed the information presented with respect to Louisa County, that data is of little value due to its lack of organized bargaining.

IV. STATUTORY CRITERIA

The Public Employment Relations Act does not set out explicit statutory criteria by which a fact-finder is to determine the reasonableness of the parties proposals when formulating his or her recommendations. However, it has been generally accepted over many years that the Iowa legislature intended fact-finders formulate recommendations based upon the statutory criteria for arbitration awards. Those criteria are contained in Section 22.9 of the Act. That section provides that a panel of arbitrators (or a single arbitrator if mutually accepted by the parties) shall consider in addition to any other relevant factors the following described criteria:

a. Past collective bargaining contracts between the parties including the

bargaining that led to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effect of adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operation.

Section 20.17(6) of the Act provides: "No collective bargaining agreement or arbitrator's decision shall be valid and enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending budget or would substantially impair or limit the performance of any statutory duty by the public employer." In making the recommendations contained in this report, the undersigned Fact-Finder has given due consideration to all of the above criteria. Consideration was given to the County's stated financial limitations, but ability to pay is not a primary factor in the recommendations made due to the fact that the County did not present evidence or argument that it had an inability to fund any of the various proposals presented.

Unlike arbitration, the fact-finding process permits a Fact-Finder to select one of the parties' positions or reject both of the parties' positions and create a recommended third

solution to the impasse issue. Where issues involve economic impasse, it is permissible for the fact-finder to consider the joint impact of the separate issues, particularly with respect to any financial limitations presented by the parties.

V. IMPASSE ISSUES

The parties are not in total agreement as to the issues presented for determination. The Union's proposed impasse issues are as follows:

Job classification and wage rates - current contract Article 27
Group hospitalization insurance - current contract Article 16
Longevity - current contract Article 28
Seniority - current contract Article 5 (add "just cause" language)

The County's proposed impasse issues are the following:

Wages - current contract Article 27
Insurance - current contract Article 16
*Nondiscrimination in Employment - current contract Article 2 (delete)
*Seniority - current contract Article 5 (delete last sentence of paragraph 2)
*Employee discipline - current contract Article 22 (delete)

At the outset of the hearing the County presented negotiability objections with respect to the Union's fact-finding proposal on Seniority - current contract Article 5 and also to delete the last sentence of paragraph 2 in current contract Article 5, Seniority, and the County's position to delete Nondiscrimination in Employment - current contract Article 2

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*The County's position is that these provisions are non-mandatory topics of bargaining.

and Employee Discipline - current contract Article 22. It was the County's stated position that Nondiscrimination in Employment and Employee Discipline should be removed from the bargaining agreement as non-mandatory topics of bargaining and further that the Union fact-finding proposal on Seniority and the last sentence in paragraph 2, Seniority, were non-mandatory topics of bargaining. The County representative stated that an appropriate filing would be made with the "Board" with respect to whether or not those impasse issues were permissive subjects of bargaining.

Although the negotiability objection was presented to the Fact-Finder, the Fact-Finder is required to make a contingent ruling under PERB Rule 621-6.3(2). That rule states in part: "Arbitrators and fact-finders shall rule on all issues submitted to them including the issue which is the subject of a negotiability dispute unless explicitly stayed by the Board. Arbitration awards and fact-finder's recommendations issued prior to the final determination of the negotiability dispute will be contingent upon that determination."

Because of the differences in the impasse issues presented by each party, where a party was not seeking change to the collective bargaining agreement the Fact-Finder has been required to assume that the party's fact-finding position is one of "current contract". The impasse issues will be determined in accordance with that premise. The precise impasse issues to be resolved are set out below as follows:

A. WAGES

1. Current contract

ARTICLE 27
JOB CLASSIFICATIONS & STRAIGHT TIME HOURLY WAGE RATES

Reference is made here to Exhibit A, Job Classifications and Straight Time Hourly Wage Rates. By this reference, said Exhibit A becomes a part of this Agreement.

EXHIBIT A
JOB CLASSIFICATIONS & STRAIGHT TIME HOURLY WAGE RATES

Job Classification	Effective 7-1-02	7-1-03
General Working Foreman	$14.82	$15.25
Working General Foreman		
Bridge Working Foreman		
Shop Working Foreman	$14.82	$15.25
Mechanic	$14.27	$14.70
Equipment Operator	$14.17	$14.60
Patrol Operator		
Dozer Operator		
Dragline Operator		
Backhoe Operator		
Brush Cutter		
Utility Worker	$13.87	$14.30
Bridge Laborer I		
Bridge Laborer II		
Signman I		
Signman II		
Truck Driver		
Engineering Technician I	$13.87	$14.30
Rodman-Draftsman		
Inspector		
Engineering Technician II	$14.17	$14.60
Inspector II		
Engineering Technician III	$14.82	$15.25
Inspector III		
Engineering Technician IV	$15.31	$15.74
Survey Chief		

As in the past, newly hired employees start at twenty cents ($.20) per hour below the above referred to applicable rate. Afer completion of each six (6) month period, a five cents ($.05)

per hour increase will be granted until the job classification rate is reached after a twenty-four (24) month period.

A K-125 Plan will be in effect if seventy-five percent (75%) of the eligible County employees participate.

2. Union Proposal

ARTICLE 27, Job Classifications and Straight Time Hourly Wage Rates
Increase all hourly wage rates as set out in the current contract, Exhibit A, Wage Rates, by $0.51 (3.5% averaged across-the-board), effective July 1, 2004.

3. County Proposal

Wages
The County proposes no change to the current wage rates.

B. INSURANCE

1. Current Contract
ARTICLE 16
GROUP HOSPITALIZATION INSURANCE

The single coverage monthly insurance premium is paid by the Employer for each regular full-time employee. Unless the employee is on leave of absence and/or has gone beyond paid sick leave, the employee will then have to write a check payable to the County for the full amount of coverage and send the check to the Auditor's office, Accounting Department, to continue coverage. If they wish to discontinue coverage, the Accounting Department requires a signed statement by the individual asking that they be taken off and it must be dated. If a regular full-time employee desires dependent coverage, the employee pays the premium for said coverage. The parties agree that the employee's contribution toward the monthly dependent coverage premium will be $125 per month.

When a new employee starts working, eligibility for group hospitalization insurance shall be in conformance to the Employer's current insurance carrier's policies and guidelines.

Upon termination, an employee must notify the Employer at least seven (7) days before the end of the last pay period, to discontinue insurance coverage as of the first of the following month.

After marriage, if an employee desires the family plan, she/she is required to convert coverage to a family plan within thirty (30) days. Each new employee must sign up for

insurance or sign a refusal card. This insurance is not automatically given to each new employee.

The Employer reserves the right to select the insurance carrier. The coverage levels and benefits will be substantially comparable to those in effect on April 1, 1989.

An employee must work at least fifteen (15) days in a month to qualify for the Employer's payment of the single coverage premium, except when the employee is off work on paid sick leave, Workers Compensation, vacation, jury duty, FMLA leave or annual military leave.

On or before January 31st each year, the Employer shall provide the Union with information indicating the amount of the Employer's self-funded insurance balances as of December 31st of the preceding year.

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2. Union Proposal

ARTICLE 16, Group Hospitalization Insurance
Current contract

3. County Proposal

Insurance
County continue to purchase the current insurance plan (Wellmark AG9 IN MED) plan. Employees contribution for family coverage to be $200.00 per month.

OR

The County purchases Wellmark Plan AH2 QTN and maintain the employee's current contribution of $125.00 per month.

C. LONGEVITY

1. Current Contract

ARTICLE 28
LONGEVITY PAY

Longevity pay will be granted as follows:

After Completion of	Per Hour Pay
Five (5) years of service	$.05

Ten (10) years of service	$.10
Fifteen (15) years of service	$.15
Twenty (20) years of service	$.20
Twenty-five (25) years of service	$.25*

*effective July 1, 2003

2. Union Proposal

ARTICLE 28, Longevity
Increase the amount currently paid for each step by $0.10.

3. County Proposal

Current contract

D. SENIORITY

1. Current Contract

ARTICLE 5

Seniority means an employee's length of continuous service with the Employer since their last date of hire. Seniority shall be administered on a job classification basis.

A new employee shall serve a probationary period not to exceed six (6) months. If the Union and Employer agree, the probationary period can be extended for any period up to a maximum of three (3) months. Upon completion of the probationary period, they shall be put on the seniority list and their seniority shall be determined from their date of employment. An employee may be terminated for any reason during the probationary period without recourse to the grievance procedure.
The Union shall be furnished with a seniority list and job classifications of all employees covered by this Agreement within thirty (30) days after its execution. When the working force is to be reduced, the employee with the least seniority in the job classification shall be laid off first. The employee removed from the job classification can then replace any junior employee in the unit, if qualified to perform the work. The junior employee replaced can then bump the junior employee in the entire unit, if qualified to perform the work. If not qualified, the removed employee will be laid off. If the junior employee is replaced, said junior employee will then be laid off. No permanent employee shall be laid off until all temporary and part-time employees are removed. On recall from layoff, employees will be returned to work in the reverse order in which they were laid off, if they are qualified to perform the work available. Probationary employees have no recall rights.

Employees to be recalled after being on layoff shall be notified as far in advance as possible by notice in writing sent by certified mail, return receipt requested, to the last address shown on the employee's record.

An employee shall lose his/her seniority and the employment relationship shall be broken and terminated as follows:

(a) Employee quits.
(b) Employee is discharged.
(c) Giving false reason for obtaining leave of absence.
(d) Two (2) consecutive workdays of absence without notice to the Employer.
(e) Failure to report for work at the end of leave of absence.
(f) Failure to report to work within five (5) working days after receiving notice to return to work following layoff, when notice of recall is sent to employee's last known address, according to Employer records.
(g) Seniority rights will be forfeited after the continuous period of layoff or absence from work exceeds twelve (12) months or seniority at time of layoff, whichever is lesser.
(h) Employee retires.

It is the employee's responsibility to keep the Employer informed of his/her current address and telephone number.

An employee promoted out of the bargaining unit and still employed by the Secondary Road Department will maintain his/her seniority as it was as of departure date from unit.

Should more than one (1) employee have the same seniority date, the employee with the lowest last four (4) digits in his/her Social Security number shall have the most seniority.

2. Union Proposal

ARTICLE 5, Seniority
Current contract except change paragraph 5(b) to read as follows: Employee is discharged for just cause.

3.County Proposal

Current contract (Do not add Union phrase "Employee is discharged for just cause" and delete last sentence of paragraph 2 of Article 5 which presently reads as follows: "An employee may be terminated for any reason during the probationary period without recourse to the grievance procedure).

(County claims non-mandatory subjects of negotiation).

E. NON-DISCRIMINATION IN EMPLOYMENT

1. Current Contract

ARTICLE 2
NON-DISCRIMINATION IN EMPLOYMENT

The Employer and Union agree to comply with any non-discrimination in employment laws that are applicable. The parties agree that the Employer shall consult with the Union and may take appropriate action to comply with the Americans with Disabilities Act (ADA). Application of the ADA shall not constitute a waiver of an employee's rights under this contract, inclusive of the employee's ability to grieve under Article 4 the effect on the employee's contractual rights.

2. Union Proposal

Current contract

3. County Proposal

It is the County's position that the following provision is a non-mandatory topic of bargaining and will be removed from the bargaining agreement for the 2004-2005 contract year.

F. EMPLOYEE DISCIPLINE

1. Current Contract

ARTICLE 22
EMPLOYEE DISCIPLINE

In the event an employee is disciplined, suspended from work, or discharged, such Employer action is subject to the grievance procedure.

2. Union Proposal

Current contract

3. County Proposal

It is the County's position the following provision is a non-mandatory topic of bargaining and will be removed from the bargaining agreement for the 2004-2005 contract year.

VI. FINDINGS OF FACT AND DISCUSSION

A. WAGES

The present Fact-Finder is faced with a wage proposal presented by the Union of an increase of 51¢ per hour averaged across-the-board or a 3.5% increase. In contrast, the County wage proposal is 0 or a wage freeze.

The Union contends that its 3.5% proposed increase is necessary due to insurance changes now sought by the County. In terms of comparability the Union claims that Keokuk County ranks third from the top in patrol operator hourly wages and third from the top in spendable hourly earnings (See Union Exhibit 9). However, it contends that the County's wage freeze combined with an increased contribution to insurance premiums or larger out of pocket expenses will result in a 4.9% to a 5.8% reduction in the patrol operator wage rate. Both the Union and the County use patrol operator wage rates as the benchmark for comparison. Further, the Union asserts that the County will reduce one full-time employee, an equipment operator, and this reduction alone would fund the wage increase as proposed by the Union.

The County contends that within the comparability group it is "dissimilar" to the others because it has greater emphasis on a farm economy. Because the farming industry is declining the County contends it is not as readily able to provide a wage increase as the other counties. The County expressed its concern that its general basic and rural basic levies are

at the maximum and that the secondary road fund balance is declining.

The Union counters that claim with the fact that no taxes have been levied for General Supplemental or Rural Supplemental. It contends that this additional tax revenue could be used to fund IPERS, FICA and health insurance self-funding.

The County maintains that Keokuk County is unlike any other county in the comparability group and emphasized that "the distinction is not a positive one". The County requests the Fact Finder take into considerations differences in per capita personal income and tax revenues with respect to comparable counties. It argues that a higher per capita income indicates a healthier local economy which reflects a general ability to pay higher wages. It contends that Keokuk County does not enjoy a comparable per capita personal income when compared to the other counties. However, its Exhibit with respect to that per capita personal income comparability is based upon data for the year 2000. The present Fact Finder understands that more recent data was not available to the County, but nonetheless more recent data may present a different comparability picture. In addition, the County argues that the effect of agricultural land value reductions has been significant and Keokuk County will be losing $276,534.00 in revenue. It's unspent balance is declining.

The County's bargaining representative vigorously contends that the fact finding process should not be one of a simple survey of comparability. The County contends that the intent and purpose of the Public Employment Relations Act has changed since it was first enacted, and while comparability may have been a primary factor for consideration in the beginning, the current conditions require the consideration of factors other than simple

comparisons. While this argument is somewhat compelling, the present Fact Finder knows of no Board decisions, Iowa Supreme Court decisions, or Iowa Court of Appeal decisions which vitiate the criteria set out in Section 20.22(9)(b) of the Act. As a matter of fact that Section does provide that the Fact Finder may give consideration to factors peculiar to the area. The present Fact Finder has done so in arriving at his recommendations.

While it is recognized that the County has concern with its ability to pay, no claim was asserted that it lacked that ability. A comparison of wages of the present involved public employees with those of other public employees doing comparable work remains an appropriate criteria. With respect to percentage wage rate increases among the comparability group, the data presented by the County and the Union is significantly similar, with the exception of Louisa County by virtue of its meet and confer status. The present Fact Finder has not considered Louisa County data as persuasive in any of the recommendations made herein.

The County claims that the comparability group average percentage wage rate increase is 2.71% for agreements effective July 1, 2004. The Union's claimed average is 3.19%, but the Union includes Louisa County in that average. With the exception of Louisa County, the percentage figures are virtually the same on both Union and County exhibits. With Louisa County excluded, I find that the average percentage increase in the comparability group is 2.71%.

Even considering the County claims of an agriculturally dependent economy, a lower per capita personal income, declining agricultural land values, a declining unspent balance

and levies which are at the maximum, present economic conditions do not justify a wage freeze.

The Union proposal for a 3.5% wage increase would represent the highest percentage among the comparability group (Louisa County excluded). At the same time I find that the County economic conditions will support a wage increase which will allow the bargaining unit to maintain its relative standing with respect to the other counties.

The present Fact Finder disregards raises given elected officials as those individuals are not like kind persons performing like kind services as are rendered by the bargaining unit.

No evidence was presented which would justify changing its relative rank with respect to wages in the comparability group. I find that the County has the ability to fund a 2.71% wage increase without an adverse impact on the interests and welfare of the public. I further find that based upon comparable counties a 2.71% increase is reasonable. A higher increase is not justifiable by reason of the Fact Finder's insurance recommendation set out below.

Based on the foregoing I recommend that wage rates be increased for bargaining unit employees by 39¢ per hour across-the-board (2.71% averaged across-the-board), effective July 1, 2004.

WAGE RECOMMENDATION

The Fact Finder's wage recommendation in terms of specific contract language is as follows:

ARTICLE 27
JOB CLASSIFICATIONS & STRAIGHT TIME HOURLY WAGE RATES

Reference is made here to Exhibit A, Job Classifications and Straight Time Hourly Wage Rates. By this reference, said Exhibit A becomes a part of this Agreement.

EXHIBIT A
JOB CLASSIFICATIONS & STRAIGHT TIME HOURLY WAGE RATES

Job Classification	Effective 7-1-04
General Working Foreman	$15.64
Working General Foreman	
Bridge Working Foreman	
Shop Working Foreman	$15.64
Mechanic	$15.09
Equipment Operator	$14.99
Patrol Operator	
Dozer Operator	
Dragline Operator	
Backhoe Operator	
Brush Cutter	
Utility Worker	$14.69
Bridge Laborer I	
Bridge Laborer II	
Signman I	
Signman II	
Truck Driver	
Engineering Technician I	$14.69
Rodman-Draftsman	
Inspector	
Engineering Technician II	$14.99
Inspector II	
Engineering Technician III	$15.64
Inspector III	
Engineering Technician IV	$16.13
Survey Chief	

As in the past, newly hired employees start at twenty cents ($.20) per hour below the above referred to applicable rate. Afer completion of each six (6) month period, a five cents ($.05) per hour increase will be granted until the job classification rate is reached after a twenty-four (24) month period.

A K-125 Plan will be in effect if seventy-five percent (75%) of the eligible County employees participate.

B. INSURANCE

Keokuk County currently provides health insurance for its employees through Wellmark Blue Cross/Blue Shield of Iowa. The current insurance plan is Wellmark AG9. The essential features of the current plan are a $100 single/$200 family deductible, 90%/10% co-insurance single, 80%/20% co-insurance family, single out of pocket maximum of $500.00 and family out of pocket maximum of $1000.00. Prescription drug costs are included under the plan deductibles.

The County formerly had a self-insured plan making contributions to a reserve fund. Beginning on January 1, 2003, a change was made from self-insured to the current premium payment plan with an initial premium period of 18 months. That premium period is currently in effect. The projected premium increase for the fiscal year commencing July 1, 2004, is shown on Union Exhibits as 2.46% and referenced in County Exhibits as 2.5%.

Currently the County pays the full single premium of $527.85 per month for all employees in the unit. The current family premium is $1029.00 per month with employees who desire family coverage paying a $125.00 per month contribution to family premium costs. Under Wellmark Blue Cross/Blue Shield Plan AG9 the single premium effective July 1, 2004, will be $540.82 and the family premium will be $1054.65.

The Union's fact finding proposal is to continue current Plan AG9 with the same employee contribution to family premium costs ($125.00 per month).

The County's fact finding proposal on insurance is presented in the alternative. The County proposes to continue to purchase the current insurance plan (Wellmark AG9) provided the employee contribution for family coverage is increased to $200.00 per month, or the County proposes to purchase Wellmark Plan AH2 QTN and maintain the employee's current family premium contribution of $125.00 per month. However, Wellmark Plan AH2 is different from the current AG9 plan in several respects. The AH2 plan contains a $250.00 single deductible and a $500 family deductible. Out of pocket maximums are $1000.00 single and $2000.00 family. There is OV co-pay of $10.00 and prescription drug co-pays of $10.00, $25.00 and $40.00 depending upon brand name, generic, etc. The single family premium for Plan AH2 is projected at $488.46 per month, which is less than the current single premium cost of $527.85 per month. The family premium for that plan is projected to be $952.55 per month which is also less than the current family premium cost of $1029.00 per month. The cost saving in premiums obviously results from increased deductibles and out of pocket maximums.

The County maintains that either of its insurance positions will still result in a superior health insurance program for Keokuk County employees. In terms of comparability it asserts that the only other county with a $100/$200 deductible plan is Appanoose County. It also points out that Appanoose County employees currently pay significantly more toward the family premium costs than do the employees in Keokuk County.

The County argues that a 2.5% increase in premium costs is a "fluke" and that Wellmark Blue Cross/Blue Shield overstated its premium costs when the County first moved

to an 18 month premium payment period. Further, the County contends that it has suffered a 47% increase in premium costs from the effective date of the current agreement to its expiration. It contends this increased insurance cost has added $1.90 per hour to the compensation package received by employees over the duration of the current agreement. In contrast to the County increase in cost, it emphasized the fact that the employee contribution for family coverage has remained at $125.00 per month. Stated another way, the County claims that employees paid 16% of the total family premium in the beginning and are now paying 12% of that same premium. The County asserts that a $200.00 per month family premium contribution by employees if the current plan is continued is reasonable and simply restores the percentages of premium that the County and the bargaining unit shared initially.

The County vigorously argues that an increase in employee cost sharing is reasonable and appropriate, and that such sharing must either come from paying more in premium costs if the current plan is continued, or a change in plan where current contributions remain the same but there is a shared cost for the employee who receives medical services by virtue of increased deductibles and out of pocket maximums. In sum, the County contends that it is not feasible to simply say no change in health insurance, because the time has come where employees must share in the increased cost in some reasonable proportion.

In contrast, the Union expressed its concern that the County continued to make contributions to a reserve fund. More specifically, the Union argues that the reserve fund has a significant balance. Union Exhibit 5 indicates that the health fund balance as of

January 9, 2004, was $78,313.21. It claims that there is a sufficient balance in the reserve fund to defray the increase in premium costs projected for current Plan AG9. It states that a 2.5% premium cost increase is very modest, and therefore affordable.

The Union strongly contends that the County insurance proposal when coupled with a wage freeze is regressive and employee spendable earnings will significantly decrease. Further the Union contends in Union Exhibit 9 that the employee contribution for dependent coverage is nearest to the average for comparable counties than any other county in the comparability group. Of course, those county comparable contributions must vary due to coverage differences among the group of counties.

While the 2.5% premium increase may be described by the County as a "fluke", it nonetheless is a fact which must be taken into consideration. The simple conclusion is that the County is not going to suffer the same kind of premium increases that are prevalent in many other locations for the next contract year. While increased cost sharing by employees is readily foreseeable for the future, the fact remains that the Fact Finder's recommendation is limited to a one year collective bargaining agreement. While the parties may face some "hard bargaining" with respect to health insurance cost sharing at the end of the coming year, present cost conditions do not justify a significant change in the health insurance program. I find that the County is capable of continuing the current insurance plan, particularly with its ability to utilize the reserve fund to offset the premium increase. In comparing bargaining unit contributions for family coverage to the other comparable counties, Keokuk County may be best described as "in the middle". While the County's arguments for change are

somewhat persuasive, they do not rise to the level of a necessity for change for the next contract year. I find that the County has the ability to continue with the present health insurance plan and present employee family contribution without significant financial adverse impact. That is not to say that circumstances will be the same a year from now, but for the present, the plan is affordable and the Fact Finder is constrained to maintain the status quo for a one year contract time period.

Based on the foregoing I recommend that the current Wellmark Blue Cross/Blue Shield AG9 Plan be continued and that employee contributions for family coverage remain at $125.00 per month.

INSURANCE RECOMMENDATION

I recommend that Article 16, Group Hospitalization Insurance as contained in the current collective bargaining agreement be continued for the next contract year, July 1, 2004, through June 30, 2005.

Because the recommendation is one of no change in current contract, existing Article 16 is not set out in full.

C. LONGEVITY PAY

The County did not present evidence or exhibits with respect to longevity payment comparisons due to its stated position that longevity pay is wages and it proposes no increase in wage rates.

Union Exhibit 14 is a chart or table comparing longevity pay in the comparability group of counties. The Keokuk County longevity pay schedule has five steps with increases

at 5, 10, 15, 20 and 25 years. Ignoring Louisa County, which as previously stated is not truly comparable, three counties have no cap or maximum step and three counties, like Keokuk County, have a cap when longevity pay stops. The other caps are 36 years, 25 years and 20 years. Thus, Keokuk County with a 25 year end step is again somewhat in the middle. The pay per step ranges from 1¢ per hour in Davis County (increasing every year with no cap), to 22¢ per hour in Poweshiek County every 5 years with no cap. With respect to pay per step, any average is obviously skewed by Poweshiek County with its 22¢ per hour increase every five years. Four of six counties have a greater number of longevity steps which results in a greater pay level at 30 years longevity. However, the present Keokuk County contract does not provide for longevity pay based on 30 years of service but terminates at 25 years.

The Union's proposal to increase longevity pay from 5¢ per hour to 15¢ per hour is difficult to resolve in terms of comparability. Three of the comparability group pay 5¢ per hour or less at each step level and three pay more. Poweshiek County at 22¢ per hour with no cap appears to be unique within the group, and no evidence was presented to indicate the rationale or basis for that level of longevity payment. If Poweshiek County is discounted then Keokuk County at 5¢ per hour remains fairly comparable within the group. In other words Keokuk County again seems to fit in the middle of the group and I find no reasonable basis to increase longevity pay as proposed by the Union. This is particularly true given the prior wage increase recommendation.

Based on the foregoing I recommend that longevity pay not be increased and that Article 28 of the current contract be continued as presently exists.

LONGEVITY RECOMMENDATION

I recommend that Article 28, Longevity Pay, as contained in the current collective bargaining agreement be continued for the next contract year, July 1, 2004 through June 30, 2005.

Because the recommendation is one of no change in current contract, existing Article 28 is not set out in full.

D. SENIORITY

A careful reading of Article 5, Seniority, reveals that the Article has the intended purposes of defining seniority, providing a process and procedure for layoff, bumping and recall and defining those circumstances when seniority is lost and terminated. The Union proposed change is limited to subparagraph (b) which is a part of those conditions by which seniority is lost and which currently reads: "Employee is discharged". The Union proposes to add a phrase so that paragraph (b) will read: "Employee is discharged for just cause". The only part of the seniority article involved in the Union proposal is that which establishes the circumstances when seniority is lost. Under current language seniority is lost when an employee is discharged. Under the Union proposal seniority may be lost when an employee is discharged for "just cause" depending upon whether or not there is a successful challenge that the discharge was a "just cause" discharge. Stated more simply, now seniority is lost if there is a discharge for any reason while under the Union proposal Seniority is lost if there is a discharge for just cause. The thrust of the proposed change is inclusion of a "just cause" discharge standard at least with respect to loss of seniority, if not termination of employment

itself.

The County not only wishes to maintain the current contract without a just cause modification and loss of seniority, but also wishes to delete the following sentence in the second paragraph of the seniority article: "An employee may be terminated for any reason during the probationary period without recourse to the grievance procedure." The County's asserted reason for its proposed change is that the quoted language is a non-mandatory subject of bargaining. As has been previously stated, the present Fact Finder is not privileged to make determinations with respect to mandatory bargaining issues because that function is reserved to the Board. The present language contained in Article 5, Seniority, has apparently been in the contract of the parties for many years if not during the entire time the parties have bargained their various labor agreements. Neither the Union nor the County presented any evidence to indicate that the seniority article has been the cause of any problems, let alone grievances. It appears that the language was established by mutual agreement and voluntarily accepted by both parties over a long period of time.

The present Fact Finder subscribes to the theory that neutrals should be reluctant to effectuate changes in contract language which has been voluntarily accepted by both sides in the absence of evidence showing unique circumstances or a compelling need for the requested change. Nothing was presented by the Union in the nature of a compelling need for the change it requests. Similarly the County did not indicate any particular problems occurring in the past with respect to the present language, or demonstrate a compelling need for its requested changes.

In the absence of unique circumstances or compelling need I find no valid reason to recommend the change requested by the Union. With respect to the change requested by the County the only argument presented was that of non-mandatory negotiability, an issue beyond the authority of the Fact Finder.

Based on the foregoing I recommend no change in Article 5, Seniority, with respect to either the Union position or the County position. Pursuant to PERB Rule 621-6.3(2) this recommendation is contingent upon the determination of any negotiability dispute presented to the Board.

SENIORITY RECOMMENDATION

I recommend that Article 5, Seniority, as contained in the current collective bargaining agreement be continued for the next contract year, July 1, 2004, through June 30, 2005.

This recommendation is contingent pursuant to PERB Rule 621-6.3(2). Because the recommendation is one of no change in current contract, existing Article 5 is not set out in full.

E. NON-DISCRIMINATION IN EMPLOYMENT

As has been stated above with respect to seniority, it appears that Article 2, Non-Discrimination in Employment, has been a part of the parties' collective bargaining agreement for many years if not since the inception of bargaining itself. The County's sole reason for its proposed deletion of the language is its claim that it is a non-mandatory subject of bargaining. Again, it is not within the authority of the Fact Finder to make a determination as to mandatory or permissive bargaining subjects. To the contrary, the Fact

Finder is required to rule without regard to mandatory/permissive bargaining status. Again, and has been stated above with respect to the seniority issue, neither party presented any evidence with respect to unique circumstances, particular problems or more broadly stated, a compelling need for change. In the absence of evidence that the questioned language has been troublesome and difficult for the parties, the Fact Finder is constrained to not recommend a change in contract language mutually accepted by the parties for many years.

Based on the foregoing I recommend that no change in Article 2, Non-Discrimination in Employment. Pursuant to PERB Rule 621.-6.3(2) this recommendation is contingent on the determination of the negotiability dispute presented to the Board.

NON-DISCRIMINATION IN EMPLOYMENT RECOMMENDATION

I recommend that Article 2, Non-Discrimination in Employment, as contained in the current collective bargaining agreement be continued for the next contract year, July 1, 2004, through June 30, 2005.

This recommendation is contingent pursuant to PERB Rule 621-6.3(2). Because the recommendation is one of no change in current contract, existing Article 2 is not set out in full.

F. EMPLOYEE DISCIPLINE

As has now been stated at least three times, the Fact Finder is without authority to make a determination as to whether or not a subject is a mandatory or non-mandatory topic of bargaining. The contract language in question is fairly straight forward in that it provides for an employee grievance in the event an employee is disciplined, suspended from work or

discharged. The language does not contain a "just cause" standard. Whether or not such standard would be implied would be a matter of determination in the grievance process and ultimately by a grievance arbitrator.

Again it would appear that this language may have been in the contract of the parties for as many as 19 years of bargaining. As has been previously stated, neither party presented evidence that the questioned language has created problems or generated grievances so as to necessitate a need for change. In other words, once again no evidence was presented to demonstrate a compelling need for change. The only evidence offered was the position of the County that the language is a non-mandatory subject of bargaining.

Where language has been in a contract for many years without problems, fact finders should be reluctant to recommend a change simply because change is requested. The ability to have a procedure to review discipline, including discharge, that has as its final step a resolution by arbitration is a basic tenant sought by all unions in labor agreements. It is often a major reason why a worker will join a union. Without it there is always a fear of possible unfair actions by an employer which cannot be remedied. However, in the absence of any demonstrated harm resulting to the County from the language in question, there is no compelling reason to recommend a change. As a practical matter the language may have had a desired effect of allowing employees to continue in the workplace with the comfort of knowing there was at least a process to challenge arbitrary or capricious conduct by the employer. Simple knowledge that there is a recourse mechanism to challenge arbitrary, capricious and unfair actions by an employer may well promote labor peace and harmony.

Precluding arbitration of discharges will not necessarily reduce expense to either party. What generally occurs is that those complaints are driven to other forums with increased costs and time delays. In the absence of clear evidence of harm I find no compelling reason to recommend a change.

Based on the foregoing I recommend no change in Article 22, Employee Discipline. Pursuant to PERB Rule 621-6.3(2), this recommendation is contingent on a determination of negotiability as presented to the Board.

EMPLOYEE DISCIPLINE RECOMMENDATION

I recommend that Article 22, Employee Discipline, as contained in the current collective bargaining agreement be continued for the next contract year, July 1, 2004, through June 30, 2005.

This recommendation is contingent pursuant to PERB Rule 621-6.3(2). Because the recommendation is one of no change in current contract, existing Article 22 is not set out in full.

VII. SUMMARY OF RECOMMENDATIONS

1. Wages - A 39¢ per hour across-the-board wage increase.

2. Insurance - Continue current health insurance plan with current contract language and current employee family premium contribution.

3. Longevity pay - Continue current contract language.

4. Seniority - Continue current contract language.

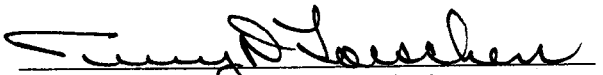
5. Non-Discrimination in Employment - Continue current contract language.

6. Employee Discipline - Continue current contract language.

The above recommendations with respect to current contract language in Seniority (Article 5), Non-Discrimination in Employment (Article 2) and Employee Discipline (Article 22), are all contingent upon the determination of negotiability disputes presented to the Board and are rendered pursuant to PERB Rule 621-6.3(2).

With respect to the above recommendation on insurance the Fact Finder's recommendation is predicated upon economic considerations limited to a one year time period. The parties are cautioned to accept the reality of escalating insurance costs and each side is urged to engage in meaningful and productive negotiations to resolve this issue for future years. The best solution is a negotiated solution mutually acceptable to each side and obtained through the bargaining process, not the impasse process.

Dated: April 29, 2004.



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FAX: 319-752-3243

CERTIFICATE OF SERVICE

I certify that on the 29th day of April, 2004, I served the foregoing Report of Fact Finder upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Ms. Renee Von Bokern
2771 104th Street, Suite H
Des Moines, IA 50322

Mr. Randy Schultz
719 West Jackson Street
Sigourney, IA 52591-1057

I further certify that on the 29th day of April, 2004, I will submit this Report for filing by mailing it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.

Terry D. Loeschen, Fact-Finder